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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,798	12/20/2001	Christopher Peter Olson	KCC-16,452	9411
35844	7590	03/23/2006	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,798

Applicant(s)

OLSON ET AL

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2006 and 17 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15, 17-37, 40, 41, 46-56, 58 and 59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 19-37, 41, 46-56 and 59 is/are rejected.
- 7) ☒ Claim(s) 17, 18, 40, 58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/06 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-15, 17-41, 46-56, 58, and 59 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-15, 19-37, 41, 46-56, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cesco-Cancian USPN 6168585.

As to claims 1, 2, 21, 22, 28, 46, and 47, Cesco-Cancian discloses a low capacity disposable absorbent article comprising: an outer cover **22** (moisture barrier is **60**), a body side liner **62**, and an absorbent pad **64** positioned between the outer cover and the body side liner. The absorbent pad has a thickness of less than about 5.0 mm (col. 6, lines 49-51), which includes 0-5 mm and includes the claimed range (col. 6, lines 49-51). Cesco-Cancian discloses the absorbent pad has an overall absorbent capacity of at least about 300 grams (col. 6, lines 53-56). Cesco-Cancian does not specifically disclose the wet thickness of the article or that the article is swellable to 3-5 times its initial thickness. However, Cesco-Cancian has a high swellable absorbent material capable of absorbing at least about 25 times its weight in water (col. 12, lines 25-28). Therefore, some swelling of the absorbent core is evident due to the high swellable

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materials present in the core. The training pant of Cesco-Cancian has the same properties (expansion upon liquid insult) and is used in the same environment as applicant's training pant. Therefore, the general conditions of the claimed invention are present in the prior art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Cesco-Cancian with the claimed dry to wet thickness ration of the present invention, since "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation", *In re Aller* et al. 105 USPQ 233. Cesco-Cancian describes the material for the absorbent core as high-absorbency materials (col. 12, lines 1-28), many of which especially combined with fluff pulp or synthetic polymers would create a void area upon swelling.

As to claims 3-9, 23-27, 29-31, and 48-54, Cesco-Cancian discloses the absorbent pad has an initial dry thickness less than about not more than 5mm, which includes 0-5 mm and includes the claimed range (col. 6, lines 49-51). The absorbent pad thickness represents 'a' thickness of the training pant as broadly as claimed.

As to claims 10-15, 32-37, 55, and 56, Cesco-Cancian discloses the width and length of the absorbent in the claimed ranges (col. 7, lines 3-7).

As to claims 19, 41, and 59, Cesco-Cancian discloses the absorbent pad comprises superabsorbent and fluff pulp (col. 11, line 60 through col. 12, line 28).

As to claim 20, Cesco-Cancian discloses a surge layer over the core (col. 12, lines 43-47).

***Allowable Subject Matter***

6. Claims 17, 18, 40, and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: The primary reason for indicating allowable subject matter is the low absorbent capacity combined with the change in thickness of the absorbent core upon insult. Applicant's arguments filed 1/5/06 regarding Glaug et al. USPN 5702376 are persuasive. Specifically that there is not motivation to modify the Glaug invention as proposed and that the suggested modification would render the invention of Glaug unsatisfactory because the combination of the training aid incorporated into the training pant would deprive the consumer of the ability to select either the type of accompanying garment or the time at which to use the training aid, which Glaug teaches is desired.

With regard to the Cesco-Cancian reference, the above claims are directed to a low capacity absorbent. While Cesco-Cancian teaches an absorbent capacity of 300 grams, it does not teach or suggest a capacity lower than 300 grams. The claimed absorbent capacity is neither anticipated nor rendered obvious by Cesco-Cancian reference and there is no suggestion to modify the reference to arrive at the lower

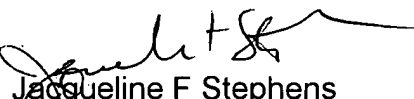
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absorbent capacity, especially in view of the teaching of a desirably higher absorbent capacity (col. 6, lines 55-56).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

March 17, 2006